

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND; PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND;
DISTRICT COUNCIL 37, AFSCME - HEALTH
& SECURITY PLAN; MAUREEN COWIE;
JUNE SWAN; and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and MCKESSON CORPORATION,
a Delaware corporation,

Defendants.

Case No. 1:05-CV-11148-PBS

Judge Patti B. Saris

**DECLARATION OF TIFFANY CHEUNG IN SUPPORT OF DEFENDANT
MCKESSON CORPORATION'S RESPONSE TO PLAINTIFFS' MOTION TO
COMPEL MCKESSON TO MAKE ITS 30(b)(6) WITNESS AVAILABLE AND
PRODUCE IMS DATA**

I, Tiffany Cheung, declare as follows:

1. I am an attorney at the law firm of Morrison & Foerster LLP and one of the attorneys of record for McKesson Corporation ("McKesson") in this action. I submit this declaration in support of McKesson Corporation's Response to Plaintiffs' Motion to Compel McKesson to Make Its 30(b)(6) Witness Available and Produce IMS Data.

Plaintiffs' Refusal to Provide Document Source Information

2. On June 22, 2006 and on multiple occasions thereafter, McKesson offered to provide plaintiffs with a log identifying the sources of the documents it has produced in this case, if plaintiffs would reciprocate by providing a source log of their own. A true and correct copy of my June 22, 2006 letter to plaintiffs' counsel, Steve Berman, is attached as Exhibit 1. Plaintiffs refused to exchange source logs.

3. McKesson thereafter asked questions about documents, as well as the merits of plaintiffs' claims, during the depositions of plaintiffs' Rule 30(b)(6) witnesses. Specifically, McKesson's Rule 30(b)(6) notice to each plaintiff included a request that it designate the person knowledgeable about "Your filing and recordkeeping systems, policies, and procedures relating to prescription drug benefits, including (a) Your use and storage of documents, including paper records, electronic data, and email, relating to prescription drug benefits; (b) the location and organization of the systems or media that store Your electronic information, the format of such information, and how to access such information; (c) the location and organization of documents relating to Your prescription drug benefits or Your reimbursement payments for drugs; and (d) Your document retention and destruction policies."

4. At their depositions, plaintiffs' Rule 30(b)(6) designees were often unable to identify where particular documents had come from. For example, when McKesson asked District Council 37's Rule 30(b)(6) witness to identify the custodians of numerous documents produced by District Council 37, its witness could not identify a single custodian. When advised of its designee's inability to identify the source of documents it had produced or the search that led to them, District Council 37 refused to produce a knowledgeable witness, claiming that it would not be appropriate for the only knowledgeable witness, an in-house attorney, to testify.

Plaintiffs' Deposition Request for McKesson's Document Source Information

5. On January 5, 2007, plaintiffs' counsel, Barbara Mahoney, sent me an e-mail requesting a Rule 30(b)(6) witness "most knowledgeable of the identity of the custodians of record of the documents produced by McKesson in this litigation." (Mahoney Decl. Ex. A.) That same day, I renewed McKesson's offer to provide a source log for this custodian information, if plaintiffs would agree to do the same. (*Id.* Ex. B.) In response, Ms. Mahoney refused to provide source information for plaintiffs' documents, but stated: "If you are willing to provide this information freely, we will forego our deposition request." (*Id.* Ex. C.) On January 11, 2007, McKesson accepted plaintiffs' offer and agreed to provide plaintiffs with a source log. (*Id.* Ex. E.) On January 12, 2007, Ms. Mahoney advised that plaintiffs would not withdraw their request for a Rule 30(b)(6) witness, stating for the first time that "[o]ur offer to cancel the deposition is conditioned on receipt of the requested information" (*Id.* Ex. F.)

6. On January 15, 2007, Martin Luther King Day, plaintiffs e-mailed McKesson's counsel a notice for a deposition on January 26, 2007 of a witness "who is knowledgeable of the identity of the custodians of record of the documents produced by McKesson in this litigation." (*Id.* Ex. G.) On January 19, 2007, McKesson objected to this notice because the notice failed to comply with the 14-day notice requirement under Case Management Order No. 1. (*Id.* Ex. H.) On this date, I also committed to providing McKesson's source log to plaintiffs by January 31, 2007. (*Id.*)

7. On January 22, 2007, Ms. Mahoney wrote that "[p]laintiffs intend to proceed with the deposition as scheduled" (*Id.* Ex. I.) On January 23, 2007, I reiterated that the deposition notice was defective and that the deposition was unnecessary in light of McKesson's agreement to provide plaintiffs with a source log. A true and correct copy of this letter is

attached as Exhibit 2. That same day, plaintiffs filed their motion to compel testimony from a Rule 30(b)(6) witness knowledgeable about McKesson's document custodians.

McKesson's Production of Its Source Log

8. On January 31, 2007, I sent Ms. Mahoney a letter, enclosing McKesson's source log. That log identifies, in table form, the Bates ranges of all McKesson documents that have been produced thus far, and gives the corresponding name of the individual or other source from whom the documents were obtained. A true and correct copy of that letter and source log is attached to this declaration as Exhibit 3.

McKesson's Efforts to Obtain Permission to Produce IMS's Proprietary Data

9. McKesson is contractually bound to obtain IMS Health, Inc.'s ("IMS") permission before producing any of IMS's proprietary information in McKesson's possession to third parties. I understand from plaintiffs' counsel that they requested similar information from the manufacturer defendants in the AWP MDL, a related suit before this Court by the same plaintiffs and plaintiffs' counsel against drug manufacturers, and that plaintiffs executed IMS's confidentiality agreements before the MDL defendants produced IMS data to plaintiffs. Similarly, in this case, IMS requested that plaintiffs and McKesson sign confidentiality agreements prepared by IMS before the production of any IMS data.

10. The parties participated in a discovery conference regarding plaintiffs' request for IMS data on September 22, 2006, during which McKesson agreed to request IMS's consent to the production of IMS data. On September 26, 2006, I contacted Kristen Furtak, in-house counsel at IMS, to request permission to produce IMS's proprietary data to plaintiffs in this case. In the weeks following, before McKesson received IMS's confidentiality agreement, McKesson reviewed and prepared IMS data for production to the plaintiffs.

11. On January 10, 2007, I received an email from Ms. Mahoney stating that McKesson must produce the IMS data in “very short order or we will have to take the matter up with the Court.” (Mahoney Decl. Ex. M.)

12. On January 11, 2007, I informed Ms. Mahoney that IMS had not yet given its permission to produce the data, but that McKesson anticipated producing the information “by the end of this month.” (*Id.*)

13. The following day I emailed Ms. Furtak of IMS, reminding her of McKesson’s request to obtain permission to produce the IMS data. A true and correct copy of that email is attached as Exhibit 4 to this declaration.

14. On January 12, 2007, I spoke with Ms. Furtak by telephone and was informed that it would take about “a couple of days” after January 15, 2007 to prepare the confidentiality agreement.

15. The following Monday, on January 15, 2007, I relayed that information to Ms. Mahoney, and informed her that McKesson’s production of the data would begin immediately following plaintiffs’ execution of the IMS confidentiality agreement. (*Id.* Ex. N.)

16. The next day, on January 16, 2007, Ms. Mahoney replied, asking to be kept “informed of any updates.” (*Id.* Ex. O.) On January 23, 2007, although they had not yet signed the necessary confidentiality agreement, plaintiffs moved to compel McKesson’s production of the IMS data.

17. On January 25, 2007, I contacted Ms. Furtak by telephone to follow up on the confidentiality agreements that IMS was preparing because I had not yet received these agreements from IMS.

18. On January 30, 2007, Ms. Furtak sent me a copy of the confidentiality agreement prepared by IMS for plaintiffs' counsel's signature. That same day I emailed this agreement to plaintiffs' counsel. A true and correct copy of that email is attached as Exhibit 5.

McKesson's Production of IMS Data

19. On January 31, 2007 plaintiffs' counsel returned an executed copy of the IMS confidentiality agreement. That same day, I forwarded the executed agreement to IMS, and on February 1, 2007, received permission from Ms. Furtak to produce the IMS data. A true and correct copy of that email exchange is attached as Exhibit 6. Later that same day, I sent plaintiffs a CD containing IMS data by overnight mail, informing them that additional IMS data would be produced on a rolling basis. A true and correct copy of the cover letter accompanying that production is attached to this declaration as Exhibit 7.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of February, 2007, in San Francisco, California.

By: /s/ Tiffany Cheung
Tiffany Cheung

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on February 6, 2007.

/s/ Lori A. Schechter
Lori A. Schechter

Exhibit 1

MORRISON | FOERSTER

425 MARKET STREET
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CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

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DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

June 22, 2006

By E-Mail

Writer's Direct Contact

415/268-6848

TCheung@mofo.com

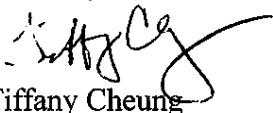
Steve W. Berman
Hagens Berman Sobol & Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Re: *New England Carpenters Health Benefit Fund v. First DataBank*

Dear Steve:

I write in response to your letter of today, which requests a list of custodians. We will provide plaintiffs with a log reflecting the sources of the documents produced by McKesson if plaintiffs will provide McKesson with a source log for their productions. Please confirm that plaintiffs will agree to this.

Sincerely,



Tiffany Cheung

cc: *Via E-mail*

Melvin R. Goldman
Lori A. Schechter
Paul Flum
Joan Griffin
Elizabeth Fegan

Thomas M. Sobol
George E. Barrett
Edmund L. Carey
Gerald E. Martin

Timothy L. Miles
Jeffrey Kodroff
John Macoretta
Kenneth A. Wexler

Exhibit 2

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WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

January 23, 2007

By E-Mail

Writer's Direct Contact
415/268-6848
TCheung@mofo.com

Barbara A. Mahoney
Hagens Berman Sobol & Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Re: *New England Carpenters Health Benefit Fund v. First DataBank*

Dear Barbara:

This letter responds to your letter of January 22 regarding the Rule 30(b)(6) deposition plaintiffs seek.

First, we do not intend to produce a witness for this deposition on January 26. As we previously stated, your deposition notice violated the 14-day notice period that plaintiffs asked the Court to impose. Your letter offers no basis for plaintiffs to exempt themselves from this requirement. Surely plaintiffs should have to comply with what they asked for.

Second, plaintiffs agreed to forgo the deposition if they were given a source log. (Your January 5, 2007 e-mail: "If you are willing to provide this [document custodian] information freely, we will forego our deposition request.") McKesson agreed to comply with the deal plaintiffs offered (despite plaintiffs' refusal to reciprocate in kind), and agreed to a date certain. Plaintiffs have now reneged.

Third, plaintiffs have no basis for insisting on production of McKesson's source log on an earlier date since (a) plaintiffs refused to voluntarily produce their own source log; (b) McKesson's class opposition is due January 24, and we are understandably busy; and (c) plaintiffs have offered no basis for any urgency.

Finally, a deposition is not the appropriate means to obtain source log information and is unnecessary in light of McKesson's agreement to provide a written source log. If you nonetheless move to compel, we will seek sanctions for this discovery abuse.

Sincerely,



Tiffany Cheung

Exhibit 3

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SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

January 31, 2007

By E-Mail

Writer's Direct Contact

415/268-6848

TCheung@mofo.com

Barbara A. Mahoney
Hagens Berman Sobol & Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Re: *New England Carpenters Health Benefit Fund v. First DataBank*

Dear Barbara:

In response to plaintiffs' offer to withdraw their request for a Rule 30(b)(6) witness regarding the custodians of the documents produced by McKesson, McKesson agreed to voluntarily provide plaintiffs with a source log. On January 19, we committed to getting that log to you on January 31. Despite the fact that plaintiffs have reneged on their offer, enclosed is a log identifying the sources of the documents produced by McKesson in this case.

Sincerely,


Tiffany Cheung

Enclosure

MCKESSON'S SOURCE LOG

Production Bates Range	Source
MCKAWP 0000001 - 0007474	Legal Department
MCKAWP 0007475 - 0029962	Bates Range Nullified, Electronic Error
MCKAWP 0029963 - 0035159	Pia Castillo
MCKAWP 0035160 - 0035415	Eric Cullenward
MCKAWP 0035416 - 0049363	Erlinda Thomas
MCKAWP 0049364 - 0052135	Ron Castaldo
MCKAWP 0052136 - 0052179	Eric Cullenward
MCKAWP 0052180 - 0052181	Pia Castillo
MCKAWP 0052182 - 0052183	Bob James
MCKAWP 0052184 - 0052192	Galina Mayorchuk
MCKAWP 0052193 - 0052194	Bob James
MCKAWP 0052195 - 0052198	Pia Castillo
MCKAWP 0052199 - 0052210	Eric Cullenward
MCKAWP 0052211 - 0052260	Erlinda Thomas
MCKAWP 0052261 - 0052264	Jeff Herzfeld
MCKAWP 0052265 - 0052266	Ron Castaldo
MCKAWP 0052267 - 0052290	Greg Yonko
MCKAWP 0052291 - 0052340	Boyd Phillips
MCKAWP 0052341 - 0052347	Anthony Dolan
MCKAWP 0052348 - 0052350	Robert Alfaro
MCKAWP 0052351	Ed Bissler

MCKESSON'S SOURCE LOG

Production Bates Range	Source
MCKAWP 0052352	Robert Alfaro
MCKAWP 0052353 - 0052361	Ed Bissler
MCKAWP 0052362 - 0052364	Becca Norris
MCKAWP 0052365	Ed Bissler
MCKAWP 0052366 - 0052368	June Fallon
MCKAWP 0052369 - 0052377	Mike Eckel
MCKAWP 0052378	Tony Rosa
MCKAWP 0052379 - 0052380	Sam Thompson
MCKAWP 0052381 - 0052386	Laura Perez
MCKAWP 0052387	Legal Department
MCKAWP 0052388 - 0052391	Tony Rosa
MCKAWP 0052392 - 0052394	Legal Department
MCKAWP 0052395	Ryan Gamlin
MCKAWP 0052396	Rose Gabaeff
MCKAWP 0052397 - 0052398	Tony Rosa
MCKAWP 0052399	Brian McAndrews
MCKAWP 0052400 - 0052405	Mike Eckel
MCKAWP 0052406	Martha Torres-Morgan
MCKAWP 0052407 - 0052409	Lilbeth Valiao
MCKAWP 0052410	June Fallon
MCKAWP 0052411 - 0052413	Lilbeth Valiao

MCKESSON'S SOURCE LOG

Production Bates Range	Source
MCKAWP 0052414 - 0052419	Maribel Mallari
MCKAWP 0052420 - 0052428	Tyler Jones
MCKAWP 0052429 - 0052434	Ricky Terrell
MCKAWP 0052435	Tyler Jones
MCKAWP 0052436	Michael Bishop
MCKAWP 0052437 - 0052438	Telisca Lyndsay
MCKAWP 0052439	Tyler Jones
MCKAWP 0052440 - 0052442	Karen Martindale
MCKAWP 0052443 - 0052444	Dolores Amerine
MCKAWP 0052445 - 0052448	Dan Jeffries
MCKAWP 0052449 - 0052450	Sheri Harbour
MCKAWP 0052451 - 0056575	Ed Bissler
MCKAWP 0056576 - 0057217	Anthony Dolan
MCKAWP 0057218 - 0062270	Galina Mayorchuk
MCKAWP 0062271 - 0071594	Bob James
MCKAWP 0071595 - 0072065	Martha Torres-Morgan
MCKAWP 0072066 - 0073836	Jeff Herzfeld
MCKAWP 0073837 - 0074076	Pricilla DeLaCruz
MCKAWP 0074077 - 0075597	Darlene Ray
MCKAWP 0075598 - 0075718	Karen Martindale
MCKAWP 0075719 - 0075765	Rex Catton

MCKESSON'S SOURCE LOG

Production Bates Range	Source
MCKAWP 0075766 - 0075936	Stacy Harber
MCKAWP 0075937 - 0075973	Business Information Services Department
MCKAWP 0075974 - 0076953	John Bonner
MCKAWP 0076954 - 0076980	Ron Castaldo
MCKAWP 0076981 - 0079483	Mike Eckel
MCKAWP 0079484 - 0080597	June Fallon
MCKAWP 0080598 - 0080626	Jack Fragie
MCKAWP 0080627 - 0080701	Bob James
MCKAWP 0080702 - 0080972	Galina Mayorchuk
MCKAWP 0080973 - 0081079	Ned McKenna
MCKAWP 0081080 - 0081097	Leonard Moore
MCKAWP 0081098 - 0081133	Erlinda Thomas
MCKAWP 0081134 - 0081165	Sam Thompson
MCKAWP 0081166 - 0083440	Leslie Friedman
MCKAWP 0083441 - 0084289	Tyler Jones
MCKAWP 0084290 - 0084694	Greg Yonko
MCKAWP 0084695 - 0085200	John Figueroa
MCKAWP 0085201 - 0085227	Martha Torres-Morgan
MCKAWP 0085228 - 0085340	Pia Castillo
MCKAWP 0085341 - 0085760	Wai Pang
MCKAWP 0085761 - 0092035	Business Information Services Department

MCKESSON'S SOURCE LOG

Production Bates Range	Source
MCKAWP 0092036 - 0093733	Ron Castaldo
MCKAWP 0093734 - 0093870	Leslie Friedman
MCKAWP 0093871 - 0093920	Jeff Herzfeld
MCKAWP 0093921 - 0093942	Bob James
MCKAWP 0093943 - 0093949	Tyler Jones
MCKAWP 0093950 - 0094022	Darlene Ray
MCKAWP 0094023 - 0094099	Erlinda Thomas
MCKAWP 0094100 - 0095284	Galina Mayorchuk

Exhibit 4

From: Cheung, Tiffany
Sent: Friday, January 12, 2007 8:20 AM
To: 'Kristen Furtak (kfurtak@us.imshealth.com)'
Subject: McKesson

Kristin:

I am hoping to speak with you about the IMS data that has been requested from McKesson in litigation and that we have previously discussed. Are you available for a call today? Please name a time, and I'd be happy to give you a call.

Regards,
Tiffany

Tiffany Cheung
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425 Market St.
San Francisco, CA 94105
(415) 268-6848
tcheung@mofo.com
www.mofo.com

Exhibit 5

From: Cheung, Tiffany
Sent: Tuesday, January 30, 2007 3:28 PM
To: Steve Berman; 'Barbara Mahoney'
Subject: New England Carpenters v. First DataBank



Document.pdf (512 KB)

We just received the attached confidentiality agreement prepared by IMS. Please sign the agreement and forward the executed agreement to me so that we may provide it to IMS in obtaining its permission to produce IMS data in this case.

Regards,

Tiffany Cheung
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tcheung@mofo.com
www.mofo.com

Exhibit 6

-----Original Message-----

From: KFurtak@us.imshealth.com [mailto:KFurtak@us.imshealth.com]
Sent: Thursday, February 01, 2007 11:20 AM
To: Cheung, Tiffany
Subject: RE: New England Carpenters: Executed Confidentiality Agreements

Yes, McKesson may now produce the data.

Thanks,

Kristen J. Furtak, M.A.
Corporate Attorney
IMS Health Incorporated
660 West Germantown Pike
Plymouth Meeting, PA 19462
(p) 610-260-6645
(f) 610-260-6640

From: Cheung, Tiffany [mailto:TCheung@mofo.com]
Sent: Wednesday, January 31, 2007 6:05 PM
To: Furtak, Kristen (Plymouth Meeting)
Subject: New England Carpenters: Executed Confidentiality Agreements

<<Document.pdf>> <<SFX1BC.pdf>>

Kristen,

I have attached executed copies of the confidentiality agreements you prepared for McKesson and for plaintiffs' counsel in the matter entitled, *New England Carpenters, et al. v. First DataBank, et al.* Please let me know if McKesson now has IMS' permission to produce the data in McKesson's possession that is covered by the attached confidentiality agreements.

Regards,

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Exhibit 7

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WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

February 1, 2007

By E-Mail and Overnight Mail

Writer's Direct Contact

415/268-6848

TCheung@mofo.com

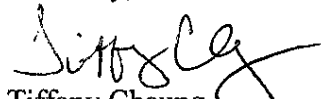
Barbara A. Mahoney
Hagens Berman Sobol & Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Re: *New England Carpenters Health Benefit Fund v. First DataBank*

Dear Barbara:

We received yesterday a copy of the confidentiality agreement signed by plaintiffs that governs certain IMS data to be produced in this case. Today, IMS granted McKesson permission to produce the data governed by this confidentiality agreement. Thus, please find enclosed a CD, bates-labeled MCK AWP 0095285, containing IMS data produced by McKesson. As we previously discussed, McKesson does not have IMS data with all the fields and in the format plaintiffs requested, and it is not clear to us that plaintiffs are interested in the limited IMS data in McKesson's possession. McKesson, nevertheless, is beginning its rolling production of IMS data with the enclosed representative examples of reports that McKesson has received from IMS. Please let us know if, as we suspect, the enclosed reports do not contain the data fields that plaintiffs are seeking.

Sincerely,


Tiffany Cheung

Enclosure (via overnight mail)